

REMARKS/ARGUMENTS

Claims 1-10 stand rejected in the outstanding Official Action. Applicants in the above amendment have cancelled claim 5, amended claims 1-4 and 6-10 and added newly written claims 11-16. Therefore, claims 1-4 and 6-16 are the only claims remaining in this application.

The Examiner's indication of PTO acceptance of the submitted formal drawings is very much appreciated. Additionally, the Examiner's acknowledgment of Applicants' claim for foreign priority and receipt of the certified copy of the priority document is appreciated.

It is noted that Applicants submitted an Information Disclosure Statement on February 18, 2005 citing a number of foreign patent documents and other documents which were cited and are of record in this application during PCT prosecution. These references, in order to be made of record in the present national phase application, must be listed on a PTO Form 1449, but the Patent Office has previously requested that applicants refrain from submitting copies of such PCT considered prior art. Applicants note that the "Notice of Acceptance of Application" mailed August 19, 2005 confirms PTO receipt of the International Search Report. Applicants respectfully request the Examiner to consider the prior art which is of record in the PCT International application and which was duly submitted to the U.S. PTO PCT Receiving Office. The Examiner is respectfully requested to consider these references, sign and date the previously submitted PTO Form 1449 and return a copy thereof to the Applicants' undersigned representative.

On page 2 of the Official Action, the Examiner objects to claims 2-10, referencing the clause "A device according to claim 1" and alleging that this clause raises antecedent basis issues. The Examiner's objection is respectfully traversed, as specifying "A device according to

claim” X is a clear indication of the antecedent basis for “device” i.e., in claim X. It cannot possibly be a separate device, but rather, must be the device referenced in the claim X.

Accordingly, there is no antecedent problem and the objection is respectfully traversed.

However, Applicants have amended claims 2-4 and 6-10 to utilize the Examiner’s suggested “The device,” rather than “A device.”

The Examiner objects to claim 2, suggesting that there is insufficient antecedent basis for the limitation “the metal comprising electrode/air interface.” Claim 2 has been amended to reference the “metal electrode/air interface” and clear antecedent basis for this language is set out in claim 1 specifying that “at least one of the electrodes is a thin semitransparent metal covering and separating said layer from air.” Such a thin semitransparent metal will inherently have two sides, one subsequently recited in the claim as comprising an interface between the layer and the metal electrode and the other separating the metal surface from the air, inherently known as a electrode/air interface.

The Examiner’s attention is directed to the Manual of Patent Examining Procedure (MPEP) Section 2173.05(e) which specifies that “inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation ‘the outer surface of said sphere’ would not require an antecedent recitation that the sphere has an outer surface.” In the present claim merely reciting that the metal electrode covers and separates the layer from air inherently provides antecedent basis for the fact that the metal electrode has an electrode/air interface. Accordingly, any further objection to claim 2 is respectfully traversed.

Claim 3 is objected to on page 2 of the Official Action, with the Examiner questioning “is the electrode in line 3 of claim 3, the metal comprising electrode or the other electrode?” The

answer is yes, but the claim has been amended to clarify this antecedent basis. Since only one of said first and second electrodes is required to be a “metal” electrode in claim 1, there is no further confusion in claim 3 and any further rejection thereunder is respectfully traversed.

In view of the above amendments to claims 1-3, there are believed to be no remaining bases for objection to these claims and any further objection thereto is respectfully traversed.

Claims 1, 2, 5-7 and 9 stand rejected under 35 USC §102 as being anticipated by Scherer (U.S. Patent 6,534,798). This rejection is respectfully traversed, as Scherer fails to disclose all claimed elements of Applicants’ independent claim 1 and therefore cannot anticipate claim 1 or claims dependent thereon.

Applicants’ independent claim 1, as well as new claims 11-16, all require “at least one of the electrodes is a thin semitransparent metal covering and separating said layer from air” (emphasis added). This forms the “metal electrode.” The claim positively requires that the metal electrode “cover” the “at least one layer comprising one of a dielectric and semiconductor material.” Therefore, the Scherer reference, in order to support a rejection under 35 USC §102, must disclose a metal electrode which covers the “at least one layer.”

The Scherer reference clearly discloses that it does not cover the underlying layer because it specifically discloses that the pattern is formed by modulating the top metal thickness between “40 nm and 0 nm.” A 0 nm thickness metal layer means that there is no material covering the metal layer and thus is a hole. Scherer does not comply with Applicants’ claim requirement of “covering” the layer.. As a result, independent claim 1 and claims 2, 5-7 and 9 dependent thereon cannot be anticipated by the Scherer reference.

Claims 3, 8 and 10 stand rejected under 35 USC §103 as unpatentable over Scherer, further in view of Arnold (U.S. Publication 2004/0012328). Inasmuch as this obviousness rejection depends upon the Scherer reference showing the subject matter of independent claim 1, the above comments relating to the defect in the Scherer reference are herein incorporated by reference.

Furthermore, Arnold is not available as a reference against any claims in the pending application. Arnold was published January 22, 2004 and is only available as of its publication date. The present application, as can be seen from the U.S. PTO filing receipt, is a national phase entry of International PCT Application PCT/GB03/003343 filed on July 31, 2003. Thus, the International application was filed prior to the Arnold publication date and therefore Arnold is not available as a prior art reference against the present application.

Thus, for either of the above reasons (the defect in Scherer and/or Arnold's subsequent filing date), the rejection of claims 3, 8 and 10 is respectfully traversed.

Applicants have also submitted newly written claims 11-16 with independent claims directed to specific embodiments of the generic claim. Entry and consideration of newly written claims 11-16 is respectfully requested.

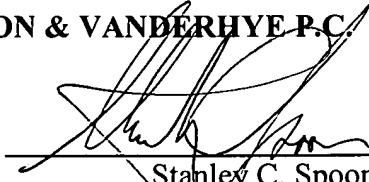
Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that remaining claims 1-4 and 6-16 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

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Respectfully submitted,

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